

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE DR JUSTICE SHAMEEM AKTHER

W.P. No. 21193 of 2017

O R D E R:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This writ petition is filed by the Government seeking to set aside the order dated 21.04.2016 in O.A.No. 34 of 2015 passed by the Tribunal, whereby the O.A. filed by the respondent Nos.1 to 14 herein, was allowed.

The petitioners herein are the Government and respondent Nos.1 to 14 herein are the applicants.

Brief facts are that a Notification dated 06.12.2008 was issued for recruitment to the posts of Teachers all over the State. Respondent Nos.1 to 14 were among the candidates who had applied for the posts of Teachers in Nizamabad District. The respondents were successful in the written test and provisionally selected on 04.11.2010. In pursuance of the selection, all the candidates have joined service, except (15) candidates, including the respondents herein who are 14 in number. The reason for not appointing the respondents is that they passed qualifying training course i.e. Teachers Training Certificate (TTC) from private institutions which were not recognized. On this ground, the petitioners – Government withheld the selection of the respondents in order to verify and arrive at a conclusion whether they should be appointed

or not. In the State, at that point of time, several Teacher Training Centres had cropped up, apart from the Government Teacher Training Institutions. Several candidates underwent training in private institutions which are not recognized by the Government, and for such candidates, the petitioners have conducted crash course for six months in Government institutions and those candidates who were successful in the crash course were made eligible to be considered for appointment to the posts of Teachers. In all other Districts, similarly placed candidates studied in private institutions and underwent crash course, and were treated as eligible and given appointment orders, except in Nizamabad District. The District Selection Committee, Nizamabad District raised certain doubts regarding this issue, as a result, thought the respondents were provisionally selected, they could not be appointed pending clarification from the Commissioner and Director of School Education and the Government.

The respondents, having waited for the clarification from the petitioners for a long time, filed O.A.No. 8113 of 2010 and batch, and the Tribunal, by order dated 19.11.2010, disposed of the batch of O.As. directing the petitioners to consider the cases of the respondents who appeared for DSC 2008 selections for the posts of Secondary Grade Teachers for releasing their appointment orders, and pass appropriate

orders, within a period of six weeks from the date of receipt of a copy of the order. In pursuance of the said orders, the petitioners issued proceedings in Rc.No.1111/ B3/ 2011, dated 02.11.2011 rejecting the request of the respondents for appointment to the posts of Secondary Grade Teachers. The reason for the rejection is that the qualifications acquired by the respondents are not in tune with the rules issued in G.O.Ms.No. 161, dated 06.12.2008, which governs the recruitment of DSC 2009. The proceedings dated 02.11.2011 were challenged in O.A.No. 599 of 2012, and the Tribunal allowed the said O.A. by order dated 21.08.2013 setting aside the rejection orders dated 02.11.2011 issued by the District Educational Officer, Nizamabad.

Subsequent to the orders passed by the Tribunal in O.A.No. 599 of 2012, the Commissioner and Director of School Education addressed a letter to the Principal Secretary to Government, School Education Department on 22.04.2014 stating as follows:

“Hence, the eligibility rules relating to admission of candidates in Teacher Training Institutes and completion of course were followed as were in force at the time of admission of these candidates into Crash Course and also at the time of completion of their course. At both the instances, the rules applicable to the regular Teacher Training Course Candidates were applied to those candidates also, which makes the candidates of Crash Court stand eligible on par with the candidates who have completed Teacher Training Certificate Course on regular mode”.

Subsequent to the said proceedings, further proceedings were issued by the Government in Memo No.28616/ SE-Ser.II/ A2/ 2011, dated 28.07.2014 directing the Commissioner and Director of School Education to appoint the respondents as Secondary Grade Teachers in Nizamabad District, and thereafter, appointment orders came to be issued to the respondents on 06.08.2014. Accordingly, the respondents joined duty as Secondary Grade Teachers and are working as such as on today.

Thereafter, the respondents were aggrieved by the condition imposed at item No.(ix) in the appointment orders dated 06.08.2014, which reads as follows:

“(ix) That the applicant shall not be eligible for notional fixation of seniority (on par with other DSC-2008 selected candidates) or monitory benefit in the present cadre.”

Being aggrieved, the respondents filed the present O.A.No.34 of 2015 questioning the above condition as illegal and arbitrary on the ground that they are not at fault in not allowing the respondents to join the post of Secondary Grade Teachers immediately, along with the other candidates who were selected in the same recruitment. Though they were also provisionally selected like the other candidates, they were not given posting orders in view of the doubts raised by the petitioners themselves and hence the delay in not joining

the posts is attributable to the petitioners, but not to the respondents.

The contention of the respondents before the Tribunal is that even the Commissioner and Director of School Education, while accepting the orders of the Tribunal, has clearly state in his proceedings dated 22.04.2014 that the qualifications possessed by the respondents i.e. six months Crash Course training preceded by Teacher Training Course from private institution is valid according to Rule (4) of the rules issued in G.O.Ms.No. 161 which governs DSC 2008 selection process. Once the respondents are coming within the purview of the Rules for being eligible to be appointed, denying them the benefit of appointment at the appropriate time is illegal and arbitrary. It is further contended that having appointed the respondents subsequent to the clear finding given by the Tribunal in terms of the relevant Rules, the action of the petitioners in depriving them of the seniority on par with their batch-mates who were given appointment orders in November, 2010 is highly unjust and illegal and the condition laid down in the appointment orders of the respondents would be liable to be dismissed.

The learned Government Pleader for Services appearing on behalf of the petitioners, submits that respondent Nos.1 to 14 have already accepted their appointment orders and the

conditions laid down therein that they are not entitled to seniority on par with their batch-mates, as such they cannot ask for the relief of seniority on par with their batch-mates. Moreover, in their declaration-cum-undertaking certificates, they mentioned that they shall abide by the conditions laid down in Government Memo No. 26302/ PE SER. II/ A1/ 2011, dated 17.12.2012, and therefore, the respondents cannot now turn around and seek for the benefit of seniority. However, the Tribunal ignored all these facts while allowing the O.A. filed by the respondents.

It is not in dispute that the respondents were provisionally selected way-back in November, 2008, but appointment orders were issued to them. However, only after the intervention of the Tribunal and consequently on the intervention of the Commissioner and Director of School Education issued appointment orders on 06.08.2014.

As recorded above, it clearly establishes that only in Nizamabad District, administration had raised certain doubts regarding the qualifications possessed by the respondents, whereas in the erstwhile combined State of Andhra Pradesh in all other 22 Districts, the qualifications of TTC followed by Crash Course training of six months were accepted and appointment orders were given on the basis of those qualifications and all the candidates were selected, and are

working as such without any demur. Only in case of Nizamabad District, 15 candidates, including the respondents Nos.1 to 14 herein, were deprived of the benefit of receiving appointment orders. Therefore, insofar as the issue of delay in issuing the appointment orders to the respondents is concerned, it is purely attributable to the petitioners.

It is settled law that when recruitment has taken place and selections have been finalized and there is a delay in issuance of the appointment orders to certain candidates due to administrative reasons or pendency of Court cases, such delay cannot be attributable to the candidates. It is settled law that such type of candidates, who are appointed at a later point of time, are entitled to the benefit of seniority on par with their batch-mates.

We note, the Tribunal has relied upon the judgments of the Supreme Court reported in *Surendra Narayana v. State of Bihar*¹ and *Balwanth Singh Narwala And Others v. State of Haryana and Others*².

In view of the facts recorded above, and the settled law, we are of the considered opinion that there is no discrepancy in the impugned order passed by the Tribunal.

Hence, we find no merit in the present writ petition, the same is accordingly dismissed confirming the order dated

¹ 1998(5) SCC 246

² 2008(7) 246

21.04.2016 in O.A.No. 34 of 2015 passed by the Tribunal. Consequently, the petitioners – Government are directed to comply with the directions given by the Tribunal in O.A.No.34 of 2015 within a period of eight weeks from the date of receipt of a copy of this order. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

29.06.2017

DR. SHAMEEM AKTHER, J

bcj

